

# **EXHIBIT 1**

Randal P. Bowsher

February 15, 2006

Billings, MT

1

THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

**CERTIFIED COPY**

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IN RE: PHARMACEUTICAL : MDL 1456  
INDUSTRY AVERAGE WHOLESALE : Master File No.  
PRICE LITIGATION : 01-CV-12257-PBS

- - - - - x

Billings, Montana

Wednesday, February 15, 2006

Deposition of RANDAL P. BOWSHER, a  
witness herein, called for examination by counsel  
for Defendants in the above-entitled matter,  
pursuant to notice and the Federal Rules of Civil  
Procedure, the witness being duly sworn, by  
agreement, by CRAIG KNOWLES, a Notary Public in  
and for the State of Colorado, taken at 33 Last  
Chance Gulch, Helena, Montana, at 12:38 p.m., on  
Wednesday, February 15, 2006, and the proceedings  
being taken down in Stenotype by CRAIG KNOWLES and  
transcribed under his direction.

Henderson Legal Services  
(202) 220-4158

Randal P. Bowsher

February 15, 2006

Billings, MT

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1           A.    Again, generally, reduction in  
2 reimbursement to any Medicaid services was usually  
3 always communicated to the department. And  
4 increase, I don't recall. But --

5           Q.    So your recollection is, then, that,  
6 typically, when a reimbursement level was being  
7 reduced, there would be some communications from  
8 physicians or other providers expressing  
9 opposition to that reduction?

10          A.    I don't recall any programs when I was  
11 working that, any time we reduced reimbursement,  
12 that we didn't hear from somebody.

13          Q.    Those, the concerns about changes to  
14 reimbursement, was access to medical care a  
15 concern of Montana Medicaid with respect to  
16 reimbursement levels and the prospect of  
17 physicians or other providers dropping out of  
18 Medicaid due to under-reimbursement?

19          A.    As -- regarding the physician program, I  
20 would attest to the fact that, yeah, we wanted  
21 coverage statewide as much as possible. And a  
22 response from the physician community in regard to

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Randal P. Bowsher

February 15, 2006

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1 our reimbursement levels to physicians for  
2 services, that was one of the things we heard from  
3 the community, that possibly people would be  
4 dropping out and would not provide Medicaid  
5 service, or would not provide services to Medicaid  
6 individuals.

7 Q. Is it fair to say that Montana wanted to  
8 prevent that result; they didn't like physicians  
9 or the providers dropping out of the Medicare  
10 network because of concerns about access?

11 A. That's true.

12 Q. Just going back very briefly to your  
13 testimony about the files sort of kept in your  
14 cubicle that may or may not at this point be with  
15 Ms. Brunette.

16 Do you know whether or not those files  
17 would contain any documentation regarding changes  
18 to reimbursement levels for physician-administered  
19 drugs, do you recall if that was the type of  
20 document you kept some record of?

21 A. I don't remember those specifically.

22 Q. To the extent you did keep them, would

## **EXHIBIT 2**

Brunett, Denise      HIGHLY CONFIDENTIAL  
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June 16, 2006

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THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

---000---

|                            |                |
|----------------------------|----------------|
| In Re:    PHARMACEUTICAL   | MDL DOCKET NO. |
| INDUSTRY AVERAGE WHOLESALE | CIVIL ACTION   |
| PRICE LITIGATION           | 01CV12257-PBS  |
| THIS DOCUMENT RELATES TO:  |                |
| ALL ACTIONS                |                |

Taken at 33 South Last Chance Gulch  
                                 Helena, Montana  
Friday, June 16, 2006 - 9:05 a.m.

**CERTIFIED COPY**

TELEPHONE DEPOSITION  
OF  
DENISE BRUNETT

Reported by Mary R. Sullivan, RPR, RMR,  
Freelance Court Reporter, Notary Public, residing in  
Missoula, Montana.

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Brunett, Denise

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1 two bucks and it costs me 1,500 to get it, I'm no  
2 longer going to do this service unless you can  
3 update the price, and then we go in and review a  
4 price update and update the price specific to that  
5 one injectable.

6 Q. And did--so was it your understanding that  
7 when you joined in 2001, prior to that time there  
8 hadn't been sort of a wholesale update of all  
9 physician administered drug prices?

10 A. I'm hoping you ask that in a different  
11 way.

12 Q. Sure, let me try to clarify. You said  
13 that in conversations with Mr. Bowsher and Ms.  
14 O'Hara that you learned that they had used sort of a  
15 complaint-based update system for physician  
16 administered drugs. Did I understand that  
17 correctly?

18 A. Right, yes.

19 Q. Okay. And, so, what I'm wondering is if  
20 they told you when the last time was to the extent  
21 that, you know, there was a last time, that all  
22 physician administered drugs had received some kind



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1      programs you communicated with on this subject?

2            A.    No.

3            Q.    Do you recall what information you  
4      received from those states?

5            A.    No.

6            Q.    Do you recall whether any of the  
7      information you received discussed alternative  
8      methodologies to AWP?

9            A.    An internal discussion--I'm sorry.

10          Q.    I'm sorry, yeah, I--I didn't enunciate  
11      clearly, probably. Whether any of the information  
12      that you received discussed alternative  
13      methodologies to AWP.

14          A.    Yes.

15          Q.    Okay. And what were those methodologies,  
16      if you can recall.

17          A.    I can recall one for sure that was just  
18      paying a percentage of charge.

19          Q.    And this was a methodology that was in  
20      place in some other state's Medicaid program?

21          A.    I didn't say that.

22          Q.    Okay. Do you recall what--which--which

Brunett, Denise

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1 payor or even sort of category of payor was using  
2 this percentage of charge methodology?

3 A. I recall it as my own idea, not other  
4 payor's idea.

5 Q. And I mean, I mean this in a very genuine  
6 way, I mean, how did you come up with that idea?

7 A. Brainstorming.

8 Q. Okay. Was there any information that you  
9 looked at aside from these communications to sort of  
10 generate that idea?

11 A. No, it--it--no, it--it--it's linked to the  
12 by-report methodology, so it's not--remember how I  
13 told you the whole 60 percent scenario?

14 Q. Uh-huh.

15 A. That's a methodology that's applied on a  
16 rare occasion.

17 Q. Okay.

18 A. And I was thinking--the brainstorming was  
19 should we apply it here.

20 Q. Okay. And did you pursue the use of that  
21 methodology in terms of discussing it with your  
22 superiors or other people at Medicaid?

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1           A.    I'm sure I did.

2           Q.    Okay. Do you recall who those discussions  
3 were with?

4           A.    I'm sure it was with Mary Angela and Doug.

5           Q.    Okay. And do you recall any of the  
6 substance of those conversations?

7           A.    Yeah, it's a pretty bogus way to do it.

8           Q.    That--that was the conclusion reached that  
9 that was a bogus way to do it?

10          A.    Yeah.

11          Q.    Was that a conclusion reached among the  
12 three of you--

13          A.    Yes.

14          Q.    Or--okay. And what--why did you come to  
15 that conclusion or why was that your conclusion that  
16 it was a bogus way to do it?

17          A.    Because charges are elevated, and once  
18 somebody realizes you're paying on that methodology,  
19 they elevate them more.

20          Q.    So the concern was that it would cause  
21 providers to increase their charges; is that right?

22          A.    Yes.

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1 Q. Okay. And I assume that based on the  
2 conclusion that it was a bogus methodology, in your  
3 words, and what we've discussed about the  
4 methodology in place now, that that was--that  
5 methodology was never adopted by Medicaid?

6 A. As an entirety, no.

7 Q. Okay.

8 A. I told you that rarely it's applied to a  
9 code here, and there's no other way to price it.

10 Q. How long was this--this process that you  
11 underwent to review the methodology? I--maybe I can  
12 ask it a different way that might help clarify.  
13 This was--if I understand you correctly, this was  
14 sort of a--you know, a project that you took on to  
15 look at this and communicate with other payors and  
16 other state Medicaid agencies, and what I'm  
17 wondering is sort of when the projects start--  
18 started and when it ended?

19 A. It started very soon after I began my  
20 employment, and I would estimate that it was within  
21 a year. I'm looking to the memo that I handed you  
22 earlier, because by the time we posted our first

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1      as a document that's contained in your files?

2            A.    Yes.

3            Q.    Okay. And for the record, is this the  
4      same document that you showed me earlier this  
5      morning?

6            A.    Yes.

7            Q.    Okay. Ms. Brunett, in the--sort of the  
8      upper left of this document, there's a column or a  
9      listing, I should say, of dates underneath the  
10     phrase "history when prices were updated". Can you  
11     tell me what--what information is reflected by  
12     these--this series of dates here?

13           A.    Yes. I had placed a request into ACS to  
14     tell me when they had record of file update requests  
15     for when physician injectables were updated, the  
16     prices were updated, and they had e-mailed me these--  
17     these dates, and I cut and pasted them from the e-  
18     mails into this memo.

19           Q.    And is it--is it correct that the first  
20     date is January 1st, 1991 and then the next date is  
21     July 1st, 2002?

22           A.    Yes.

Brunett, Denise  
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Helena, MT

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1 form is called?

2 A. CMS 1500.

3 EXHIBIT:

4 (Exhibit Brunett 012 marked for  
5 identification.)

6 Q. (By Mr. Sipos) Ms. Brunett, the court  
7 reporter's--or I've, rather, I've handed you what's  
8 been marked as Exhibit Brunett 012 to your  
9 deposition. For the record, this is document MT  
10 03220 to 03221. Ms. Brunett, is this a CMS 1500  
11 claim form that you just referred to, or an example  
12 of one?

13 A. Yes.

14 Q. And it--am I correct that with respect to  
15 physician administered drugs, that physicians  
16 submitting this form are the parties reimbursed for  
17 those drugs.

18 A. Yes.

19 Q. This might cover just a little bit some of  
20 the things we discussed already, but just to be  
21 clear, the--if you look in Column D of this form,  
22 which is two-thirds of the way down in a column

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1 entitled Procedures, Services or Supplies, can you  
2 tell me what information is put in this CPT/HCPCS  
3 column by a provider who's seeking reimbursement for  
4 physician administered drugs?

5 A. If you're looking at Column 24 D, that's  
6 where the providers list the services they render  
7 and supplies or devices they're billing us for.

8 Q. Okay. And is this where a provider would  
9 identify or write down the particular J-code for a  
10 drug?

11 A. If they were billing a J-code, yes.

12 Q. Okay. And for drugs, for physician  
13 administered drugs, is it correct that--or let me  
14 ask, does Montana require, then, an NDC number be  
15 inserted here, or is it a J-code that's inserted  
16 here?

17 A. No--there's no NDC requirement.

18 Q. Okay.

19 A. So they're to bill us for what they do,  
20 and if it's a J-code, that's what we require.

21 Q. And is the J-code what's required for  
22 physician administered drugs?









## **EXHIBIT 3**

4/5/2006 BULLOCK, Margaret V.1

**THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

-----X  
**In re: PHARMACEUTICAL )  
INDUSTRY AVERAGE WHOLESALE )  
PRICE LITIGATION ) MDL DOCKET NO.  
 ) CIVIL ACTION  
THIS DOCUMENT RELATES TO: ) 01CV12257-PBS  
ALL ACTIONS )**

-----X

**DEPOSITION OF MARGARET BULLOCK**

**Phoenix, Arizona**

**April 5, 2006**

**9:00 a.m.**

**DEPOSITION OF MARGARET BULLOCK, commenced at  
9:00 a.m. on April 5, 2006, at Phoenix, Arizona,  
before Robin L. B. Osterode, RPR, CSR, Arizona  
Certified Reporter No. 50695.**

4/5/2006 BULLOCK, Margaret V.1

1       **Q. Then we'll definitely try to make it as**  
2       **short as possible. Since the time you left your**  
3       **full-time position with Montana Medicaid, have you**  
4       **been involved in supporting the lawsuit in any way,**  
5       **providing information, or anything like that?**

6       **A. No.**

7       **Q. And in these questions I don't want to ask**  
8       **about attorney-client communications, but I wanted**  
9       **to get a general sense of what your role was in the**  
10       **decision to file the lawsuit. When -- do you recall**  
11       **when you first became aware that there was a**  
12       **possibility of filing this lawsuit?**

13       **A. I -- I was made aware of the lawsuit by**  
14       **Joe in Montana, our former attorney general, Joe**  
15       **Mazurek, who had left a message on my Helena phone**  
16       **in January.**

17       **Q. January of 2002?**

18       **A. 2006. I was not made -- I don't remember**  
19       **being made aware of it before then.**

20       **Q. So you don't recall being consulted or**  
21       **being involved in a decision to file a lawsuit?**

22       **A. No.**

4/5/2006 BULLOCK, Margaret V.1

1 A. No, I'm sorry, I don't understand.

2 Q. When did you first become aware that AWP  
3 was not the actual acquisition price?

4 A. I don't remember when I actually became  
5 aware.

6 Q. But it was clear that people on your staff  
7 were aware of that?

8 A. Yes.

9 Q. And do you have any idea for how many  
10 years they had been aware of that?

11 A. No.

12 Q. And do you have any reason to think that  
13 Montana did not receive the 1997 OIG report that's  
14 referenced here in 1997?

15 A. I have no reason to believe that.

16 Q. That they did not get it?

17 A. But I don't know.

18 Q. Okay. Continuing on down towards the  
19 bottom of that page there's a reference to a study  
20 being done, again, in 2000 and showing that there  
21 was even a larger difference between the AWP and the  
22 discounts, the effective price; do you see that?

4/5/2006 BULLOCK, Margaret V.1

1      **pharmacies were actually paying for these drugs?**

2           **MS. HORGAN: Objection to form.**

3           **THE WITNESS: Yes, it was a concern.**

4      **BY MR. BURMAN:**

5           **Q. Because it was a way to save -- to reduce**  
6      **Medicaid expenditures?**

7           **A. Yes.**

8           **Q. The first full paragraph on 5659, the**  
9      **first sentence states "It is important to note that**  
10     **while the OIG claims the discount below AWP is 19.71**  
11     **and 65.37, the division does not wish to reduce**  
12     **reimbursement to those exact levels." Do you recall**  
13     **why there was a decision not to go more than the 15**  
14     **percent adjustment that you were considering?**

15          **A. I don't recall.**

16          **Q. Were you concerned that if the discount**  
17     **off of AWP was increased to more than 15 percent,**  
18     **that you would possibly lose access for Medicaid**  
19     **patients to pharmaceuticals?**

20          **A. Yes.**

21          **Q. And how did you try to obtain information**  
22     **on how far you could go for budget purposes without**

4/5/2006 BULLOCK, Margaret V.1

1 paragraph?

2 A. I do.

3 Q. Do you have any recollection of the  
4 University of Texas study?

5 A. I don't.

6 Q. Do you have a recollection of an issue  
7 involving non-identifiable patient level  
8 pharmaceutical data for any study?

9 A. No.

10 Q. Do you recall taking any action in  
11 response to Exhibit Bullock 005?

12 A. I don't.

13 (Marked for identification Exhibit  
14 Bullock 006.)

15 BY MR. BURMAN:

16 Q. Okay. Ms. Bullock, Exhibit Bullock 006 is  
17 Bates numbers 27591 - 92, and it's a December 20,  
18 2002 memo from Mr. Chappuis; are you familiar with  
19 this document?

20 A. Yes.

21 Q. And were you involved in making this  
22 decision or these proposed changes?



4/5/2006 BULLOCK, Margaret V.1

1 A. Yes.

2 Q. If you'd look on the second page, the last  
3 bullet item under number 5 talks about decreasing  
4 the reimbursement rate for generic prescriptions  
5 from the AWP less 15 percent to AWP less 25 percent;  
6 do you see that?

7 A. Yes.

8 Q. And my understanding is that that proposal  
9 ended up not being implemented; is that accurate?

10 A. I don't remember.

11 Q. Do you recall that -- what do you recall  
12 about the proposal for the generics to go to AWP  
13 less 25 percent?

14 A. I don't recall the discussion.

15 Q. At any time during your tenure, do you  
16 recall consideration of whether generic drugs from  
17 pharmacies should be reimbursed as a lower effective  
18 rate than brand-name drugs?

19 A. I believe we had a discussion or those  
20 discussions.

21 Q. And what do you recall was the reason for  
22 having that differential or proposing that

4/5/2006 BULLOCK, Margaret V.1

1 differential?

2 A. I don't recall.

3 Q. Do you recall concerns about making that  
4 change, that it might reduce access to generic  
5 drugs?

6 A. Yes.

7 Q. And what was the nature of the concern?

8 A. That pharmacies would say we've had  
9 enough, we can't afford this anymore, we can't  
10 afford to serve Medicaid patients.

11 Q. Even though they were being reimbursed at  
12 something above their actual acquisition costs?

13 A. Yes, that was the discussion, yes.

14 Q. But it wasn't enough above their --

15 A. Right.

16 Q. And did you take those concerns seriously?

17 A. Yes.

18 Q. And were those factored into the policy  
19 decisions that Montana Medicaid made?

20 A. Yes.

21 (Marked for identification Exhibit  
22 Bullock 007.)

4/5/2006 BULLOCK, Margaret V.1

1 BY MR. BURMAN:

2 Q. Ms. Bullock, Exhibit Bullock 007 is Bates  
3 25569 to 71, and it appears -- whoops, did I do the  
4 wrong one? Yeah, that's right. It appears to be a  
5 memo from you to Ms. Gray; is that correct?

6 A. Yes.

7 Q. And is that your signature on Exhibit  
8 Bullock 007?

9 A. Yes.

10 Q. Why don't you take a second to review  
11 that. Have you had a chance to review --

12 A. I have.

13 Q. And what do you recall about Exhibit  
14 Bullock 007?

15 A. What I recall is there was a lot of time  
16 put into trying to develop the rationale, because it  
17 was difficult to do.

18 Q. Difficult, but you needed to find some way  
19 --

20 A. But we needed to find ways to reduce the  
21 expenditure rate.

22 Q. Do you recall any discussion of why you

# **EXHIBIT 4**

Jeff Buska

October 19, 2005

Helena, MT

1

1 THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF MASSACHUSETTS

3 ----oOo----

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6 In re: PHARMACEUTICAL, MDL DOCKET NO.  
7 INDUSTRY AVERAGE WHOLESALE CIVIL ACTION  
8 PRICE LITIGATION 01CV12257-PBS

9

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11 THIS DOCUMENT RELATES TO:

12 ALL ACTIONS

13

14

Volume I

15

DEPOSITION OF JEFF BUSKA

16

Taken at:

**CERTIFIED COPY**

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Law offices of

18

Gough, Shanahan, Johnson & Waterman

19

33 South Last Chance Gulch

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Helena, Montana

21

October 19, 2005

22

9:00 a.m.

Henderson Legal Services  
(202) 220-4158

Jeff Buska

October 19, 2005

Helena, MT

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1 Medicaid?

2 A. Can you clarify that for me?

3 Q. Are you aware -- yes, I can. I can try.

4 A. Okay.

5 Q. Are you aware of any studies that the  
6 Federal Government, such as the Office of Inspector  
7 General of HHS, has done relating to Medicaid drug  
8 reimbursement?

9 A. Yes, I am aware of studies and reports  
10 they have done.

11 Q. Have you reviewed them?

12 A. Yes.

13 Q. Other than the OIG studies, have you seen  
14 any other studies from the Federal Government that  
15 relate to Medicaid drug reimbursement?

16 A. I believe that the GAO has also done some  
17 analysis as well.

18 Q. Have you reviewed that analysis?

19 A. Yes.

20 Q. Where did you get these OIG or GAO reports  
21 from?

22 A. They are sent to the state Medicaid

Jeff Buska

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Helena, MT

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1 director from the Centers for Medicare and Medicaid  
2 Services or directly from the OIG to him.

3 Q. How are those studies then distributed  
4 within the Montana Medicaid program?

5 A. Either the state Medicaid director will  
6 distribute those to the division administrators, who  
7 in turn, they give them to their staff; or he will  
8 give them to me and then I share them with the  
9 division administrators as part of my duties as an  
10 analyst and coordinator for him.

11 Q. Are you a member of any e-mail listservs  
12 relating to your work for Montana Medicaid?

13 A. I'm a member of a listserv that comes from  
14 the Centers for Medicare and Medicaid Services,  
15 specifically relating to a lot of the current issues  
16 on the Medicare Modernization Act.

17 Q. Has that listserv also covered topics  
18 related to Medicaid reimbursement?

19 A. No.

20 Q. How long have you been a member of that  
21 listserv?

22 A. Since CMS put that up in terms of their

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1 getting information out to the states.

2 Q. Do you recall roughly when they  
3 established it?

4 A. I believe they probably started a lot of  
5 it in January 2004, since the law was passed in  
6 December of 2003.

7 Q. It's a listserv specific to the MMA?

8 A. Specific to the MMA.

9 Q. Are you a member of any other listservs  
10 relating to your work?

11 A. No.

12 Q. Were you previously a member of any  
13 listservs relating to your work?

14 A. Previously, I believe, I was on a listserv  
15 related to dental reimbursement, a lot of the issues  
16 that were going on in the program regarding dental  
17 services.

18 Q. Are you aware of state Medicaid directors  
19 meeting on any e-mail listserv?

20 A. Yes.

21 Q. Were you ever a member of that list?

22 A. I'm not a member of that list, but I



Jeff Buska

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1 services are available to the general population."

2 Q. I'll take it back.

3 A. (Handing document to Counsel.)

4 Q. In your position in Montana Medicaid, have  
5 you been aware of that law?

6 A. Yes.

7 Q. Have you ever heard it referred to as the  
8 "equal access provision"?

9 A. Not specifically in terms of the equal  
10 access, no.

11 Q. Has it been referred to in Montana  
12 Medicaid by any other general description?

13 A. The general description is to ensure  
14 reasonable access to healthcare services.

15 Q. Is it fair to say that Montana is a large  
16 state?

17 MS. BRECKENRIDGE: Objection; that's very  
18 vague.

19 Q. (By Ms. O'Sullivan) Is it physically a  
20 very large state?

21 A. Physically large, yes.

22 Q. It's a state with many rural areas?

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Helena, MT

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1 MS. BRECKENRIDGE: Is that a question?

2 THE WITNESS: Is that a question?

3 Q. (By Ms. O'Sullivan) Yes, it is.

4 A. Yes, it is a state that we know there are  
5 a lot of rural areas.

6 Q. And because it's a large state, is it also  
7 a state where the Medicaid population is widely  
8 dispersed across the state?

9 A. We do have clients across the state, but  
10 whether they are widely dispersed, I think a lot of  
11 them are -- we do have a number of clients in our  
12 larger communities. But, yes, we do have a lot of  
13 clients that live in rural areas.

14 Q. When you use the term "client", you mean  
15 Medicaid beneficiary?

16 A. Medicaid beneficiary, Medicaid client.

17 Q. What steps has State of Montana taken to  
18 ensure reasonable access to healthcare services across  
19 the state of Montana?

20 A. Well, the services are available to all  
21 Medicaid clients. If they are eligible for the  
22 Medicaid program and a healthcare program is enrolled

Jeff Buska

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Helena, MT

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1 don't we take a five-minute break.

2 (A brief recess was taken.)

3 (Document marked Deposition

4 Exhibit Buska 0012 for identification.)

5 BY MS. O'SULLIVAN:

6 Q. Mr. Buska, the court reporter has handed  
7 you what has been marked Exhibit Buska 012, a document  
8 entitled "Review of Pharmacy Acquisition Costs for  
9 Drugs Reimbursed Under the Medicaid Prescription Drug  
10 Program of the Montana Department of Health and Human  
11 Services", dated July 11, 1996. Do you see that?

12 A. Yes.

13 Q. Did the state receive this document?

14 A. I believe that we did, but I don't know  
15 that for a fact.

16 Q. Would you please turn to the second page  
17 of the report itself? Under the Summary, page 1, the  
18 last paragraph, do you see where it says: "In  
19 Montana, we obtained pricing information from 43  
20 pharmacies"?

21 A. Yes.

22 Q. Do you see in the third sentence, it says:

Jeff Buska

October 19, 2005

Helena, MT

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1 "For Montana, the overall estimate of the  
2 extent that AWP exceeded invoice prices was 16.2  
3 percent for brand name drugs and 48.5 percent for  
4 generic drugs"?

5 Do you see that?

6 A. Yes.

7 Q. So the State of Montana was aware, at  
8 least as of 1996, that AWP exceeded invoice prices for  
9 these levels.

10 A. Yes.

11 Q. Turning to the next page, the first line  
12 states:

13 "We are recommending that the Montana  
14 Department of Public Health and Human Services (State  
15 Agency) consider the results of this review as a  
16 factor in any future changes to pharmacy reimbursement  
17 for Medicaid drugs."

18 Do you see that?

19 A. Yes.

20 Q. Did the state reexamine -- did the state  
21 consider the results of this review in any future  
22 changes?

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October 19, 2005

Helena, MT

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1 produce later. Can you tell me what the state  
2 considered switching their reimbursement formula to?

3 A. I know the state took a look at what other  
4 states were doing in terms of how they paid for  
5 prescription drugs. I know some states use wholesale  
6 acquisition costs, WAC, plus a percentage. Most of  
7 the states, the majority of the states, to my  
8 knowledge, use a form of AWP minus a percentage.

9 Q. Let's turn to 1(f), documents received  
10 from publishers and documents related to plaintiff's  
11 reliance on such documents.

12 Do you know what type of documents -- first of  
13 all, do you know what the notice means when it refers  
14 to a publisher?

15 A. What I believe by a "publisher" would be  
16 documents that might be generated by the Kaiser  
17 Foundation, for example, or the APHA, which would be  
18 the American Public Health Services Association, often  
19 generate reports.

20 Q. In this context for the purpose of  
21 litigation, this is a term I definitely can clarify.  
22 Here we mean Red Book, or First Data Bank, Blue Book.

Jeff Buska

October 19, 2005

Helena, MT

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1 Are you familiar with those publications?

2 A. Yes, I'm familiar with those.

3 Q. Which publication, if any, did Montana  
4 rely on?

5 A. For the pricing, we relied on information  
6 provided by First Data Bank.

7 Q. In what format did the state get pricing  
8 from First Data Bank?

9 A. The state obtains that pricing information  
10 through our contract with ACS, and ACS gets that  
11 information electronically.

12 Q. Does the state itself have access to that  
13 electronic data?

14 A. Yes, we do.

15 Q. Who within Montana Medicaid has that  
16 access?

17 A. The program staff, pharmacy program  
18 manager would have access to that pricing information.  
19 The supervisor would have access to that, and the drug  
20 rebate staff. Those are the ones that typically use  
21 it.

22 (Document marked Deposition

## **EXHIBIT 5**

Helena, MT

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THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

---oOo---

**CERTIFIED COPY**

In re: PHARMACEUTICAL,  
INDUSTRY AVERAGE WHOLESALE  
PRICE LITIGATION

MDL DOCKET NO.  
CIVIL ACTION  
01CV12257-PBS

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THIS DOCUMENT RELATES TO:  
ALL ACTIONS

---

Volume II

DEPOSITION OF JEFF BUSKA

Taken at

Law Offices of

Gough, Shanahan, Johnson & Waterman

33 South Last Chance Gulch

Helena, Montana

December 14, 2005

9:00 a.m.

Henderson Legal Services  
(202) 220-4158



## Helena, MT

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1 services, but are the payment rates reasonable and  
2 adequate to assure access to -- that the provider will  
3 continue to provide access to our beneficiaries for  
4 prescription drugs.

5 Q. So is that really a fourth and related  
6 factor that Montana Medicaid considered in setting its  
7 reimbursement rate, was maintaining access to care for  
8 Medicaid beneficiaries?

9 A. It's always a concern that we have in  
10 setting payment rates.

11 Q. I would like to turn, then, to  
12 physician-administered drugs. What are the factors  
13 considered in setting the reimbursement rate for  
14 physician-administered drugs?

15 A. I don't know the details about those  
16 factors, but I believe oftentimes, what they try to do  
17 is, they try to -- some of the physician-administered  
18 drugs, they are reimbursed based on what is called J  
19 codes. And there's -- CPT 4 or HCPCS codes is the  
20 coding structure for those physician-administered  
21 drugs. They are typically injectable drugs.

22 And some J codes are 1 to 1 relationship

1 are set.

2 Q. Mary Angela Collins is the head of the  
3 managed care bureau?

4 A. She is its bureau chief, yes. Or she would  
5 be able to identify the staff person who would know  
6 the most about it.

7 Q. I think I'm going to get back to the  
8 question of what factors were considered in the rate  
9 once I understand what the reimbursement rate was. So  
10 how does Montana Medicaid reimbursement physicians for  
11 physician-administered drugs?

12 A. How we reimburse for physician-administered  
13 drugs is, the physician will bill a CMS 1500 claim  
14 form, identify the CPT or HCPCS code which for these  
15 drugs would be J codes, I don't know if there are  
16 other codes that would be utilized. And it would then  
17 apply the lower of logic that we have of their bill  
18 charges or the fee that we have on file for that  
19 service.

20 Q. Those are physician fee schedules?

21 A. Physician fee schedule.

22 Q. Who at Montana Medicaid sets those

1           Q. Was another factor in revising the  
2 reimbursement rate whether pharmacies might not be  
3 financially viable if reimbursement was reduced  
4 significantly?

5           A. I'm sure that was also a concern that we  
6 had, is the impact on the pharmacies and the impact on  
7 the clients, as well.

8           Q. By impact on the clients, the concern of  
9 Montana Medicaid was the potential impact on the  
10 Medicaid beneficiaries?

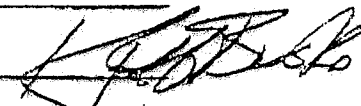
11          A. Medicaid beneficiaries and their access to  
12 services.

13          Q. In 2003, when Montana Medicaid considered  
14 revising its reimbursement formula for generic drugs  
15 to be AWP minus 25 percent, I would like to walk you  
16 through the same question.

17               What factors did Montana consider in  
18 revising that reimbursement formula?

19          A. It would basically be the same factors as  
20 in 2002, in that we were experiencing a need to -- a  
21 budget reduction to stay within our appropriation of  
22 having to implement cuts that not only included the

1 ERRATA

2 CAPTION: Deposition of Jeff Buska 12/14/20053 DATE: 1/18/064 WITNESS: Jeff Buska 5 I wish to make the following changes, for the following  
6 reasons:

7 PAGE LINE

|    |            |           |                            |                           |
|----|------------|-----------|----------------------------|---------------------------|
| 8  | <u>257</u> | <u>13</u> | CHANGE: <u>joint</u>       | REASON: <u>point</u>      |
| 9  | <u>261</u> | <u>2</u>  | CHANGE: <u>Counseltech</u> | REASON: <u>Consultec</u>  |
| 10 | <u>261</u> | <u>6</u>  | CHANGE: <u>EFS</u>         | REASON: <u>FFT</u>        |
| 11 | <u>261</u> | <u>21</u> | CHANGE: <u>--</u>          | REASON: <u>MMIS</u>       |
| 12 | <u>263</u> | <u>20</u> | CHANGE: <u>--</u>          | REASON: <u>MMIS</u>       |
| 13 | <u>263</u> | <u>22</u> | CHANGE: <u>UR</u>          | REASON: <u>DUR</u>        |
| 14 | <u>272</u> | <u>15</u> | CHANGE: <u>Counciltech</u> | REASON: <u>Consultec</u>  |
| 15 | <u>274</u> | <u>20</u> | CHANGE: <u>Counseltech</u> | REASON: <u>Consultec</u>  |
| 16 | <u>275</u> | <u>22</u> | CHANGE: <u>BP</u>          | REASON: <u>AWP</u>        |
| 17 | <u>276</u> | <u>1</u>  | CHANGE: <u>are</u>         | REASON: <u>OR</u>         |
| 18 | <u>276</u> | <u>22</u> | CHANGE: <u>ADCs</u>        | REASON: <u>NDCs</u>       |
| 19 | <u>312</u> | <u>6</u>  | CHANGE: <u>AW</u>          | REASON: <u>AWP</u>        |
| 20 | <u>317</u> | <u>2</u>  | CHANGE: <u>--</u>          | REASON: <u>Care</u>       |
| 21 | <u>323</u> | <u>15</u> | CHANGE: <u>built</u>       | REASON: <u>billed</u>     |
| 22 | <u>325</u> | <u>19</u> | CHANGE: <u>submittable</u> | REASON: <u>rejectable</u> |

Jeff Buska personally appeared before me on the  
18th day of January, 2006.

Henderson Legal Services  
(202) 220-4158

KARIN S. FERLICKA  
NOTARY PUBLIC for the State of Montana  
Residing at Helena, Montana

| 1  | PAGE  | LINE  | CHANGE:  | REASON:               |
|----|-------|-------|--|-----------------------|
| 2  | 334   | 5     | CHANGE: <u>IN</u>                                      | REASON: <u>of</u>     |
| 3  | 394   | 20    | CHANGE: <u>JEAN</u>                                    | REASON: <u>JEANIE</u> |
| 4  | 408   | 6     | CHANGE: _____  | REASON: _____         |
| 5  | "     | 7     | CHANGE: <u>Question</u><br><u>Does not make sense!</u> | REASON: _____         |
| 6  | "     | 8     | CHANGE: _____  | REASON: _____         |
| 7  | 416   | 14    | CHANGE: <u>anything</u>                                | REASON: <u>amount</u> |
| 8  | 419   | 21    | CHANGE: <u>bases</u>                                   | REASON: <u>basic</u>  |
| 9  | 436   | 2     | CHANGE: <u>Mouger</u>                                  | REASON: <u>Munger</u> |
| 10 | 436   | 13    | CHANGE: <u>Cloaker</u>                                 | REASON: <u>Kloker</u> |
| 11 | 436   | 13    | CHANGE: <u>Maureen</u>                                 | REASON: <u>Marie</u>  |
| 12 | 438   | 4     | CHANGE: <u>MAP</u>                                     | REASON: <u>FMAP</u>   |
| 13 | 456   | 3     | CHANGE: <u>Betsy</u>                                   | REASON: <u>Betty</u>  |
| 14 | _____ | _____ | CHANGE: _____  | REASON: _____         |
| 15 | _____ | _____ | CHANGE: _____  | REASON: _____         |
| 16 | _____ | _____ | CHANGE: _____  | REASON: _____         |
| 17 | _____ | _____ | CHANGE: _____  | REASON: _____         |
| 18 | _____ | _____ | CHANGE: _____  | REASON: _____         |
| 19 | _____ | _____ | CHANGE: _____  | REASON: _____         |
| 20 | _____ | _____ | CHANGE: _____  | REASON: _____         |
| 21 | _____ | _____ | CHANGE: _____  | REASON: _____         |
| 22 | _____ | _____ | CHANGE: _____  | REASON: _____         |

# **EXHIBIT 6**

Mary Angela Collins

CONFIDENTIAL

March 17, 2006

Helena, MT

1

THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

**CERTIFIED COPY**

IN RE: PHARMACEUTICAL )

INDUSTRY AVERAGE )

WHOLESALE PRICE )

LITIGATION, ) Civil Action 01CV12257PBS

DEPOSITION UPON ORAL EXAMINATION OF  
MARY ANGELA COLLINS

12:00 p.m.

March 17, 2006

GOUGH SHANAHAN JOHNSON & WATERMAN

33 South Last Chance Gulch

Helena, Montana 59601

REPORTED BY: Judith A. Robinson, CCR #2171

Henderson Legal Services  
(202) 220-4158

Mary Angela Collins

CONFIDENTIAL  
Helena, MT

March 17, 2006

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1 determined?

2 A. I'm not. I know the methodology has  
3 changed in the past few years. I directed that  
4 pricing for J-codes be, number one, systematized and  
5 number two, routinely updated.

6 Q. Was there a period of time prior to that  
7 direction when pricing for physician-administered  
8 drugs was not systemized or routinely updated?

9 A. I know it was not routinely updated. That  
10 happened before I came into the bureau.

11 Q. And you know for what period of time that  
12 was true that those prices weren't routinely  
13 updated?

14 A. I know only about when I came in, in '98  
15 through whenever I gave that direction. But I don't  
16 remember when that was. It was after Randy Bowsher  
17 had left because it was Denise Brunett that  
18 systemized and updates the J-code pricing.

19 Q. What was it that prompted your decision to  
20 give that directive?

21 A. Denise explained to me that she would get  
22 calls from physicians who would complain that, given



Mary Angela Collins

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March 17, 2006

Helena, MT

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1 conclusion that you would not be collecting those  
2 rebates?

3 MS. BRECKENRIDGE: Objection.

4 MR. SIPOS: It was probably poorly worded.

5 BY MR. SIPOS:

6 Q. At least as of 2002, it was concluded that  
7 Montana Medicaid was not going to collect for  
8 physician-administered drugs; correct?

9 A. Would you like to know what we did decide?

10 Q. Yes.

11 A. We decided not to require physicians to  
12 put codes on claims.

13 Q. So did it collect rebates for physicians  
14 who elected voluntarily to put NDC numbers on their  
15 claim form?

16 A. No.

17 Q. Let me ask it this way then:

18 As of 2002, Montana was not collecting  
19 rebates for physician-administered drugs; correct?

20 A. That's correct.

21 Q. Up until March of 2006, Montana was not  
22 collecting rebates for physician-administered drugs?

Mary Angela Collins

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Helena, MT

March 17, 2006

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1           **A.     That's correct.**

2           Q.     Were there facts or circumstances that  
3           changed between 2002 and 2006 that led to Montana  
4           actually collecting those rebates?

5           **A.     Yes.**

6           Q.     And what were those facts or  
7           circumstances?

8           **A.     Completing our analysis of the options.**  
9           **The alternative methods we could use to collect**  
10          **rebates.**

11          Q.     What options or alternatives were  
12          considered?

13          **A.     We considered an option we had heard about**  
14          **that involved doing a kind of a time and motion**  
15          **study of -- of the billing of J-codes. Not really a**  
16          **time and motion. But just a survey of which NDCs**  
17          **appeared most frequently in certain J-codes over a**  
18          **specific period of time and then using that**  
19          **allocation to then bill the drug manufacturers for**  
20          **rebates. And we abandoned that idea.**

21          Q.     So I understand correctly, was that idea  
22          abandoned prior to the actual undertaking of the

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Helena, MT

March 17, 2006

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1           **A.    I didn't in preparation for this**  
2           **deposition, no.**

3           Q.    Did you bring any documents with you  
4           today?

5           **A.    No.**

6           Q.    Did you discuss the deposition with anyone  
7           else besides Ms. Breckenridge?

8           **A.    No.**

9           Q.    You understand that this deposition is  
10          being taken in context of a lawsuit; correct?

11          **A.    I do.**

12          Q.    Were you consulted prior to the filing of  
13          this lawsuit by Montana?

14          **A.    I wasn't.**

15          Q.    Do you know when it was filed?

16          **A.    I don't.**

17          Q.    When did you first learn about it?

18          **A.    Either -- I don't know exactly when. In**  
19          **the past month or so.**

20          Q.    So am I correct in understanding, you  
21          learned about it in the context of being contacted  
22          for your deposition?

Mary Angela Collins

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Helena, MT

March 17, 2006

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1 BY MR. SIPOS:

2 Q. Do I understand your previous testimony  
3 correctly, this is the form you used to submit  
4 claims to Montana Medicaid?

5 A. Yes.

6 Q. Do you have any reason to believe that  
7 every claim submitted using this form in Montana is  
8 false?

9 A. I do not have any reason to believe that.

10 Q. Like I said, I just need a couple of  
11 minutes with my notes.

12 (Off the record.)

13 BY MR. SIPOS:

14 Q. I have a couple of quick follow-up  
15 questions.

16 You indicated that you first learned about  
17 the lawsuit about a month ago within the past couple  
18 months and that was in the context of collecting  
19 some documents from the lawsuit.

20 Did I understand that correctly?

21 A. That's correct.

22 Q. Prior to that time, were you ever asked to